is also present as a controlling factor. *Bank* v. *Daniel* (1838) 12 Pet. 32; *Hollingsworth* v. *Stone* (1883) 90 Ind. 244. Thus, any trace of constructive fraud, or of inequitable conduct, as where one party knew and took advantage of an error of law by the other which he did not correct, *Haviland* v. *Willets, supra,* will turn the scale. *A fortiori,* relief is justified by evidence of misrepresentation, *The Chestnut-Hill etc. Co.* v. *Chase* (1840) 14 Conn. 123; *Hardigree* v. *Mitchum* (1874) 51 Ala. 151, even though innocent, *Wilson* v. *Maryland etc. Co.* (1882) 60 Md. 150, undue influence, *Sands* v. *Sands* (1885) 112 Ill. 225, surprise, *Evans* v. *Llewellyn* (1787) 1 Cox Eq. Cas. 332, imbecility, *Nelson* v. *Betts* (1886) 21 Mo. App. 219, misplaced confidence, *Hall* v. *Otterson* (1894) 52 N. J. Eq. 522, deception, *Toland* v. *Corey, supra,* ignorance of the facts, *Lumber Exch. Bk.* v. *Miller* (N. Y. 1896) 18 Misc. 127, a fiduciary relation, *Ludington* v. *Paton* (1901) 111 Wis. 208, or gross disparity in position, *Alabama etc. Co.* v. *Jones, supra.* A few jurisdictions add the further qualification that if a decree would result in an unconscionable advantage, the hardship plus the error suffices. *Wilson* v. *Ott* (1896) 173 Pa. St. 261; *Griswold* v. *Hazard* (1890) 141 U. S. 260. Contra, *Champlin* v. *Layton* (N. Y. 1837) 18 Wend. 407; *Weed* v. *Weed, supra; Lancaster* v. *Flowers* (1904) 208 Pa. St. 199. The conclusion necessarily follows that the vast majority of decisions relied on to sustain the doctrine of remedy for unilateral error of law fall short of that position. Willard, Eq. Jur. (2d Ed.) 61. A recent Iowa decision is in full harmony with this theory. The plaintiff, though aware of the facts, was ignorant of the quantum of her interest, that is of her antecedent rights, the case falling accordingly within the first group above discussed, where relief for naked error of law is said to be allowed. It appeared, however, that although the defendant knew of the plaintiff's mistake, he made no endeavor to rectify it. Rescission of a conveyance was, therefore, properly granted. *Faxon* v. *Baldwin* (Ia. 1907) 114 N. W. 40. The error of law, combined with the constructive fraud of the defendant, made out a perfect case for equitable relief under the authorities.

PROPERTY *in Custodia Legis* UPON APPOINTMENT OF A RECEIVER.—When a court of equity administers the assets of a corporation through a receiver, such property is said to be within the custody of the law. The status of the property is changed: the incidents of corporate ownership cease, and a creditor's right to obtain a lien is suspended. *Cowan* v. *Plate Glass Co.* (1898) 184 Pa. 1. It is important to determine this point in the proceedings beyond which rights cannot be enlarged or modified. The question may be considered with reference to the right which is being exercised, e. g., the right to bring a similar suit in a court of concurrent jurisdiction; *May* v. *Printup* (1877) 59 Ga. 128; or the right to make a levy upon execution. *Maynard* v. *Bond* (1878) 67 Mo. 315. When the jurisdiction of one court attaches to property, the exercise of which requires possession and control, no interference by another court is allowed. It might be conceived that the second court is powerless to acquire jurisdiction, because the property is *in custodia legis:* "When one [court] takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power as though it had been carried

physically into a different territorial sovereignty." *Covell* v. *Heyman* (1883) 111 U. S. 176. It is usually held, however, that the non-interference is due to comity. *Buck* v. *Colbath* (1865) 3 Wall. 334; *Adams* v. *Trust Co.* (1895) 66 Fed. 617, 622; *Gilman* v. *Perkins* (1881) 7 Fed. 887. Even then, it must be determined when the property is *in custodia legis*, for until then, see *Wilmer* v. *Atlantic Ry. Co.* (1874) 2 Woods 409, 420, the jurisdiction of the other court has not attached. In fixing upon such point, the court, considering that otherwise the assets could be withdrawn from the court and the object of the bill never attained, *Gaylord* v. *Fort Wayne etc. Ry. Co.* (Fed. 1875) 6 Biss. 286, 291, will hold the status of the property fixed at the earliest moment. Some courts have intimated that merely filing the bill might be sufficient. *Texas etc. Ry. Co.* v. *Lewis* (1891) 81 Tex. 1. Actual seizure is unnecessary. *Wilmer* v. *Atlantic etc. Ry. Co., supra.* The general rule is that where possession is necessary to the relief asked, the filing of the bill to administer the property for all creditors, and service of process, puts the property *in custodia legis. Belmont Nail Co.* v. *Col. etc. Co.* (1891) 46 Fed. 8; *May* v. *Printup, supra.* But all these elements must be present. *Ill. Steel Co.* v. *Putnam* (1895) 68 Fed. 515. In such cases, filing the bill is an "equitable levy." *Adams* v. *Trust Co., supra.*

Such considerations, however, do not arise when the time that the jurisdiction attaches is sought to be fixed to determine the rights of creditors to attach or levy executions on the property, under a decree of a court that has sole jurisdiction. But the court's desire to preserve equality among creditors—causing them sometimes to call the assets a "trust fund"—will lead them to suspend the *jus disponendi* as soon as possible. Shall, then, the principles which determine *custodia legis* in questions of conflicting jurisdictions, be applied to limit this right of creditors? As a general rule, they are not. The property may pass *in custodia legis*, first, when the receiver actually takes possession of the property; *Farmers' Bank* v. *Beaston* (Md. 1836) 7 G. & J. 421; second, the receiver's title may relate back to the order of appointment (the weight of authority); *Rutter* v. *Tallis* (N. Y. 1852) 5 Sandf. 610; *Conn. River Banking Co.* v. *Rockbridge Co.* (1895) 73 Fed. 709; third, the filing of the bill may fix the rights of the parties. *Merrill* v. *Comm. Ins. Co.* (1896) 166 Mass. 238. Here are two distinct ideas: the one, that the diligent creditor shall be allowed to secure a preference; the other, that "equality among creditors is equity." This proceeding to administer assets, with the resulting equality of distribution, is statutory. Being for the benefit of all creditors, a priority would be unjust, and to prevent this the sequestration must take effect from the institution of the proceedings. *Atlas Bank* v. *Nahant Bank* (1840) 23 Pick. 480. A recent New Jersey case takes a different view, holding that the filing of a bill and the issuance of a restraining order upon the corporation, did not prevent a judgment creditor from levying an execution. *Supra* v. *Princeton Lighting Co.* (1907) 68 Atl. 176. In equity, diligence is favored as well as equality, and neither should be preferred at the expense of the other. The judgment creditor has been diligent in bringing his suit; his diligence goes for naught if the filing of a bill by another creditor

any time before his suit comes to judgment, would put the property beyond execution. The principal case enables both principles to operate. It is not open to the objection that it allows a creditor to discover the state of affairs from the bill itself, to begin suit, obtain judgment and to levy execution before the order of appointment, for the interim will be made too short to permit such a result. This, it is true, where no restraining order was granted, would still leave the property open to attachment; but, such process issues only on some prescribed statutory ground, e. g., that the debtor is about to make some fraudulent disposition. Such attachment merely protects one, with no detriment to the other creditors, for the fraud would equally harm them under the receiver. Upon all these considerations, it is submitted that the decision of the principal case is the sounder, and is attended with less inconvenent results.

NEGOTIABILITY OF JOINT STOCK ASSOCIATION BONDS EXEMPTING SHAREHOLDERS' LIABILITY.—At common law, a joint stock association is a partnership. *Griffith* v. *Paget* (1877) L. R. 6 Ch. Div. 511; *Townsend* v. *Goewey* (N. Y. 1838) 19 Wend. 424. As in a simple partnership, *Haskins* v. *D'Este* (1882) 133 Mass. 356, the contracts of the association are the contracts of its members, *Tappan* v. *Bailey* (Mass. 1842) 4 Metc. 529; *McGreary* v. *Chandler* (1870) 58 Me. 537; contra, *Walker* v. *Wait* (1878) 50 Vt. 668, upon which they are primarily liable. *Keasley* v. *Codd* (1826) 2 C. & P. 408; *Skinner* v. *Dayton* (N. Y. 1822) 19 Johns. 513. It is not inconsistent with the general nature of the partnership that the death of a member does not work a dissolution, *McNeish* v. *Hulless Oat Co.* (1884) 57 Vt. 316, or that its shares are transferable. *Edwards* v. *Warren etc. Works* (1897) 168 Mass. 564. Whether statutes adding further corporate features have created a new juridical person, depends upon the nature of the legislation. If the statutory features are inconsistent with the conception of a partnership, the legislature is assumed to have created an artificial entity or quasi-corporation. Such is the limited company of England and some of the States. *In re Reese etc. Co.* (1867) 36 L. J. Ch. 618, 623; *Oak Ridge Co.* v. *Rogers* (1884) 108 Pa. 147; *Staver etc. Co.* v. *Blake* (1896) 111 Mich. 282. For jurisdictional purposes on the ground of diverse citizenship, it fails to qualify as a corporation, *Great Southern Hotel Co.* v. *Jones* (1900) 177 U. S. 449, but the Supreme Court shows a reluctance to extend the privilege of a corporation rather than a refusal to recognize the artificial person, and the association may sue in its own name when jurisdiction is invoked on other grounds. *Sanitas Co.* v. *Force Co.* (1902) 124 Fed. 302. On the other hand, if the statutory provisions are procedural, intended only to afford a convenient remedy, the fundamental nature of the association remains unchanged. *Gott* v. *Dinsmore* (1872) 111 Mass. 45. The New York associations seem to fall within this category. *People* v. *Coleman* (1892) 133 N. Y. 279; *Chapman* v. *Barney* (1888) 129 U. S. 677. While for some purposes the association or its officer, has been considered a corporation, as in the adjustment of claims between the association and shareholders, *Westcott* v. *Fargo* (1875) 61 N. Y. 542, service of process in a foreign state, *State*